Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 3796 **/2004**

PETITIONER

P.R. 3797/04 Presented by Shri A. Sri Shukla dated 8.10.04

Dr. M.P.S. Parihar,
S/o. Shri Birbham Singh Parihar, Aged about 58 years, Presently working as Deputy Director, Veterinary Services, Ambikapur, District Surguja (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through its Secretary, Department of Agriculture (Veterinary Services), Mantralaya, D.K.S.Bhawan, Raipur (C.G.)

2. Director, Directorate of Veterinary Services, Raipur (C.G.)

3. Joint Director, Veterinary Services, Bilaspur (C.G.)

RECEIVED COPY 8.10.04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

XI-HC-22

(86)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.3796/ **सन्** 2004

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19-4-2005 Mr. Ashish Shrivastava, counsel for the petitioner. Mr. G.K. Beriwal, Deputy Advocate General for the State/respondents. Heard both the counsel. Return has already been filed on behalf of the State/respondents and rejoinder has also been filed on behalf of the petitioner. The petitioner has filed this writ petition under Article 226 of the Constitution of India, questioning the legality and propriety of the order dated 28-9-2004, whereby the petitioner has been suspended in contemplation of the disciplinary inquiry under Rule 9 (1) (a) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as 'the Rules'). The only argument raised by learned counsel for the petitioner is that the petitioner was suspended on 28-9-2004 vide Annexure P-11 by the State Government i.e. respondent No.1, and even after the lapse of more than six months, charge sheet has not been served on the petitioner, therefore, the petitioner's suspension stands revoked as per the proviso to sub-rule (5) (a) of Rule 9 of the Rules. On the other hand, Mr. G.K. Beriwal, learned Deputy Advocate General for the State of Chhattisgarh argued that the petitioner has the remedy to file an appeal under Rule 23 of the Rules which as per the rejoinder, the petitioner has already availed the opportunity. Therefore, pending appeal the petitioner is not entitled to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India. Having heard learned counsel for the parties, I have perused the record and the relevant Rules.	

XI-HC-22

(87)

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Proviso to sub-rule (5) (a) of Rule 9 of the Rules envisages that "*provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant*". It is admitted position that even after the lapse of six months no charge sheet or other documents have been delivered to the petitioner herein. Therefore, as per this proviso, the suspension order stands revoked.

Now, coming to the question of alternative remedy, it is true that as per rejoinder, the petitioner preferred an appeal which is pending before the Government. But, learned counsel for the petitioner submits that the appeal was filed long back on 8-10-2004, but the same has not been disposed of so far. The petitioner was suspended by the Secretary, Department of Agriculture (Veterinary Services) i.e. respondent No.1, against that an appeal has been preferred, that is pending decision, and that has not been decided. Proviso to sub-rule (5) (a) of Rule 9 of the Rules is mandatory in nature, where after expiry of 90 days charge sheet or other documents have not been served upon the suspended employee, then the suspension stands revoked.

As per the decision of the Apex Court in the matter of **Harbanslal Sahnia and another vs. Indian Oil Corpn. Ltd. and others** reported in **(2003) 2 SCC 107**, the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and one of compulsion. The High Court is entitled to invoke the extra ordinary jurisdiction in the following circumstances; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or

(88)

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(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the present case, continuation of the suspension order after expiry of 90 days time without serving charge sheet and other documents becomes contrary to the provisions of proviso to sub-rule (5) (a) of Rule 9 of the Rules. Therefore, in the above circumstances, I do not find any substance in the argument advanced by learned Deputy Advocate General that the writ petition is not maintainable.

In the result, the writ petition is allowed and the impugned order dated 28-9-2004 is quashed to the extent that suspension of the petitioner stands revoked in view of the provisions of 2nd proviso to sub-rule (5) (a) of Rule 9 of the Rules. It is made clear that the Government will be at liberty to exercise the power under clause (b) of sub-rule (5) of Rule 9 of the Rules after serving charge sheet, if it considers expedient so to do.

In view of this order, M.(W.)P.No.4208/2004, I.A.Nos.7831/2004, 9362/2004, and 2862/2005 stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma

(पीछे देखिये)

27.4.05
26.4.05